

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CATHY J. PFEIL,

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner of  
Social Security,

Defendant.

CASE NO. C06-5546FDB-KLS

ORDER ADOPTING REPORT  
AND RECOMMENDATION

Plaintiff, fifty years old with a high school education and past work experience as an office assistant and as an “intuitive” (which Plaintiff clarified to mean “psychic”), and “intuitive arts” instructor seeks disability insurance benefits as of March 1, 2001 due to arthritis, diverticulitis, depression, fibromyalgia, and irritable bowel. The Magistrate Judge recommends that the Administrative Law Judge’s decision finding that Plaintiff was not disabled be affirmed.

The Court, having reviewed plaintiff’s complaint, the Report and Recommendation of Judge Karen L. Strombom, United States Magistrate Judge, and objections to the report and recommendation, and the remaining record, concludes that the Report and Recommendation will be adopted.

Plaintiff first objects to the Magistrate Judge’s conclusion that “the severity determination is made solely on the basis of the objective medical evidence in the record.” Plaintiff argues that SSR 96-2p provides (emphasis added):

If the adjudicator finds that such symptoms cause a limitation or restriction having more

1 than a minimal effect on an individual's ability to do basic work activities, the adjudicator  
2 must find that the impairment(s) is severe and proceed to the next step in the process even if  
3 the objective medical evidence would not in itself establish that the impairment(s) is severe.

4 Plaintiff argues that SSR 96-2p clarifies SSR 85-28, upon which the Magistrate Judge relied and which  
5 states as follows:

6 A determination that an impairment(s) is not severe requires a careful evaluation of the  
7 medical findings which describe the impairment(s) and an informed judgment about its  
8 (their) limiting effects on the individual's physical and mental ability(ies) to perform basic  
9 work activities; thus, an assessment of function is inherent in the medical evaluation process  
10 itself. At the second step of sequential evaluation, then, medical evidence alone is evaluated  
11 in order to assess the effects of the impairment(s) on ability to do basic work activities. If  
12 this assessment shows the individual to have the physical and mental ability(ies) necessary to  
13 perform such activities, no evaluation of past work (or of age, education, work experience)  
14 is needed. Rather, it is reasonable to conclude, based on the minimal impact of the  
15 impairment(s), that the individual is capable of engaging in SGA.

16 The ALJ concluded that Plaintiff did not have a severe impairment prior to her date last insured because:

17 The medical evidence shows that the claimant's abdominal complaints prior to March 31,  
18 2001 were sporadic diverticulitis symptoms (Exhibit 3F). They became more severe in June  
19 2001 (Exhibit 10F, p. 3). Similarly, her complaints of back and shoulder pain, as well as  
20 mental problems are first mentioned in June 2001 (Exhibits 6, p. 7 and 7F, p. 6). Thus,  
21 based on the medical record, the claimant's impairments are nonsevere prior to March 31,  
22 2001, the date she last met the insured status requirements.


23 It is Plaintiff's burden to show that any of the medical conditions that she may have been diagnosed with or  
24 about which she complains establishes a severe impairment. Even considering other medical complaints to  
25 be present during the relevant period, there is insufficient evidence of any kind – objective medical or other  
26 evidence pointed to by Plaintiff – to tend to show that either one or combination of ailments constituted a  
27 severe impairment. As the Magistrate Judge explained, simply showing that there is an impairment is  
28 insufficient. Plaintiff has the burden of proving that her "impairments or their symptoms affect her ability to  
perform basic work activities." Edlund v. Massanari, 253 F.3d 1152, 1159-60 (9<sup>th</sup> Cir. 2001). The  
Administrative Law Judge correctly concluded that Plaintiff did not have a severe impairment. Plaintiff's  
assertion that remand is required for failure of the ALJ to consider the back, shoulder, and mental problems  
lacks merit, as there was no evidence in the record on which the ALJ could have based a finding of severe  
impairment as to these conditions.

29 NOW, THEREFORE, IT IS ORDERED:

- 30 (1) The Court adopts the Report and Recommendation;
- 31 (2) The administrative decision is AFFIRMED; and

- 1 (3) The Clerk is directed to send copies of this Order to plaintiff' counsel, defendant's counsel  
2 and Magistrate Judge Karen L. Strombom.  
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4 DATED this 7<sup>th</sup> day of June 2007.

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7 FRANKLIN D. BURGESS  
8 UNITED STATES DISTRICT JUDGE  
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